

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

WILLIAM H. WRIGHT,

Petitioner,

v.

SAN JUAN COUNTY, A WASHINGTON  
MUNICIPAL CORPORATION,

Respondent.

Case No. 13-2-0019

**ORDER OF DISMISSAL**

A Petition for Review (PFR) was filed by the Petitioner herein, William H. Wright, on June 24, 2013. The Petitioner states in the PFR that he is challenging a State Environmental Policy Act (SEPA) Checklist and a Determination of Nonsignificance (DNS) issued by the Respondent County, specifically SEPA Checklist 2013-4-24 and DNS 2013-4-24.<sup>1</sup>

The PFR includes two issues:

**Issue 1** Whether the County has satisfied the requirements for the use of scientific and technical information required by RCW 90.58.100(1).

**Issue 2** Whether the County first, (sic) identified and assembled the most current, accurate, and complete scientific and technical information available that is applicable to the San Juan Islands.

The Board notes neither of the two issue statements asserts a violation under the State Environmental Policy Act, Chapter 43.21C RCW. A review of the PFR indicates the

<sup>1</sup> Paragraph II of the PFR describes the "Challenged Action" as SEPA Checklist 2013-4-24 and Determination of Nonsignificance (DNS) 2013-4-24. Neither of those documents was attached to the PFR. WAC 242-03-210(3): "One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board."

1 challenged SEPA checklist and DNS involve what the Board believes to be a shoreline  
2 master program update currently being conducted by San Juan County. Issue 1 alleges a  
3 violation of RCW 90.58.100(1), a statute contained within Chapter 90.58 RCW, the  
4 Shoreline Management Act. However, there is no indication of any final action having been  
5 taken by the Department of Ecology (DOE) or San Juan County in regards to the SMP  
6 update.  
7

8 RCW 43.21C.075 is clear: SEPA does not establish a separate cause of action apart  
9 from a specific governmental action.<sup>2</sup>

10 (1) Because a major purpose of this chapter is to combine environmental  
11 considerations with public decisions, any appeal brought under this chapter  
12 shall be linked to a specific governmental action. The State Environmental  
13 Policy Act provides a basis for challenging whether governmental action is in  
14 compliance with the substantive and procedural provisions of this chapter.  
15 The State Environmental Policy Act is not intended to create a cause of  
16 action unrelated to a specific governmental action.

17 (2) Unless otherwise provided by this section:

18 (a) Appeals under this chapter shall be of the governmental action  
19 together with its accompanying environmental determinations.

20 (b) Appeals of environmental determinations made (or lacking) under  
21 this chapter shall be commenced within the time required to appeal  
22 the governmental action which is subject to environmental review.  
23 (emphasis added)

24 If the Petitioner is actually alleging a violation of the Shoreline Management Act  
25 (SMA), any challenge would necessarily have to follow the final decision [the governmental  
26 action] of the Department of Ecology.<sup>3</sup> See RCW 90.58.190 and RCW 36.70A.280. There

27 <sup>2</sup> *Boss v. Dep't Of Transp.*, 113 Wn. App. 543, 549 (2002): "The general rule in both administrative and judicial  
28 SEPA appeals is that they must combine review of SEPA issues with the related government action." *State ex*  
29 *rel. Friend & Rikalo Contractor v. Grays Harbor County*, 122 Wn.2d 244, 249, 857 P.2d 1039 (1993). The  
30 purposes of this linkage requirement are to "preclude judicial review of SEPA compliance before an agency  
31 has taken final action on a proposal, foreclose multiple lawsuits challenging a single agency action and deny  
32 the existence of 'orphan' SEPA claims unrelated to any government action." *Grays Harbor County*, 122 Wn.2d  
at 251 (citing Richard L. Settle, *The Washington State Environmental Policy Act*, § 20 at 244-45 (1993)).

<sup>3</sup> RCW 90.58.190 "(1) The appeal of the department's decision to adopt a master program or amendment  
pursuant to RCW 90.58.070(2) or 90.58.090(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's final decision to approve or reject a proposed master program or master program  
amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth  
management hearings board by filing a petition as provided in RCW 36.70A.290."

RCW 36.70A.280: "(1) The growth management hearings board shall hear and determine only those petitions  
alleging either:

1 was no ordinance or other documentation evidencing final governmental action on a  
2 shoreline master program amendment attached to the PFR, which could have triggered a 60  
3 day appeal period. Under these circumstances, the Board must consider whether Petitioner  
4 Wright has properly invoked the Board's jurisdiction.

5 The Growth Management Hearings Board is a creature of the Legislature without  
6 inherent or common-law powers and, as such, may exercise only those powers conferred by  
7 statute, either expressly or by necessary implication.<sup>4</sup> A party cannot confer jurisdiction; all  
8 that a party does is invoke it. Statutory requirements must be met before jurisdiction is  
9 properly invoked.<sup>5</sup> To invoke the Board's jurisdiction to review compliance with the SMA, a  
10 party with standing must comply with the statute's procedural requirements:

- 11 a) File a petition for review that includes a detailed statement of issues  
12 presented for resolution by the Board;<sup>6</sup>
- 13 b) File the petition for review within 60 days after notice of publication by  
14 Ecology;<sup>7</sup> and,
- 15 c) Allege non-compliance with the requirements of the SMA.<sup>8</sup>

16 Similarly, in that chapter 43.21C RCW does not create a cause of action separate  
17 and apart from an underlying governmental action, any SEPA challenge related to shoreline  
18 management program amendments must await final DOE approval of those amendments.

19 The Board is authorized by statute to dismiss a petition for review if the petition is  
20 frivolous.<sup>9</sup> The Board must dismiss a petition when the Board determines jurisdiction was  
21 not properly invoked, since the Board has no power to adjudicate that particular case.<sup>10</sup>

22 Consequently, the Board finds and concludes as follows: (1) there was no final,  
23 appealable decision made by the Department of Ecology, (2) any challenge alleging  
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27 (a) That, except as provided otherwise by this subsection, a . . . county. . . planning under this chapter is not  
28 in compliance with . . . chapter 90.58 RCW as it relates to the adoption of shoreline master programs or  
29 amendments thereto . . ."(emphasis added)

30 <sup>4</sup> *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 558 (1998).

31 <sup>5</sup> *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 319 (2003).

32 <sup>6</sup> RCW 90.58.190(2)(a); RCW 36.70A.290(1).

<sup>7</sup> RCW 36.70A.290(2).

<sup>8</sup> RCW 36.70A.280(1)(a).

<sup>9</sup> RCW 36.70A.290(3).

<sup>10</sup> See *Crosby v. Spokane County*, 137 Wn.2d 296, 301 (1999) [If a court lacks jurisdiction over a proceeding, it "may do nothing other than enter an order of dismissal"]. See also *Griffith v. City of Bellevue*, 130 Wn.2d 189, 196 (1996).

1 violations of Chapter 43.21C RCW in regards to SMA amendments can only be raised in  
2 conjunction with a final DOE decision, (3) the PFR is frivolous, and (4) Petitioner failed to  
3 invoke the Board's jurisdiction to consider a shoreline master program amendment and/or a  
4 SEPA violation. RCW 36.70A.280(1)(a);<sup>11</sup> RCW 43.21C.075

6 **ORDER**

7 Based on the foregoing, the Petition for Review filed by William H. Wright, Case No.  
8 13-2-0019, is hereby dismissed.

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10 DATED this 5th day of July, 2013.

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14 William Roehl, Presiding Officer

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17 Nina Carter, Board Member

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20 Raymond Paoella, Board Member

21 Note: This is a final decision and order of the Growth Management Hearings Board issued  
22 pursuant to RCW 36.70A.300.<sup>12</sup>

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27 <sup>11</sup> The growth management hearings board shall hear and determine only those petitions alleging either:  
28 (a) That, except as provided otherwise by this subsection, a . . . county . . . planning under this chapter is not  
29 in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of  
30 shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans,  
31 development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. . .  
32 (emphasis added)

<sup>12</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), -840.  
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.  
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.